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10/520,792	01/10/2005	Aldo Di Nicolantonio	3165	3246
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743				
03/26/2008				
EXAMINER				
LEE, LAURA MICHELLE				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/520,792

**Applicant(s)**

DI NICOLANTONIO, ALDO

**Examiner**

LAURA M. LEE

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see page 2, lines 4-14, filed 12/13/2007, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 102(b) as being anticipated by Dravnicks (U.S. Patent 5,099,705) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Tam et al. (U.S. Patent 7,234,243).

### *Claim Objections*

2. Claims 3 and 6 are objected to because of the following informalities:

Claim 3, recites "wherein the oscillation mechanism includes a spring element (53) that is disposed between the housing (2) and the end (52) of the roller lever (5)." However, the specification, (page 2, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs), states that "... the forward progress of the saw changes automatically by means of an adaptive, automatic oscillation that is a function of the advancing force in the cutting direction. Preferably, this occurs by means of a spring element that is compressed further as the advancing force, i.e. cutting speed, increases." Therefore, if the spring element (53) is a structure of the "means... for automatically adjusting the oscillation stroke..." it cannot also be claimed as a part of the oscillation mechanism, wherein the duality of the oscillation mechanism and the "means... for" was previously identified in claim 1. Claim 3, line 2, should be changed to -- wherein the oscillation mechanism means includes a spring

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element (53) that is disposed between the housing (2) and the end (52) of the roller lever (5)--, to discern that two spring elements aren't being claimed.

Claim 6, line 3 recites "a second stop", however, it is noted that there is no first stop previously claimed.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tam et al. (U.S. Patent 7,234,243), herein referred to as Tam in view of Smith (U.S. Patent 6,701,816).

Tam discloses a motor-driven compass saw machine (i.e. a jigsaw) having a housing (housing, 12) that contains a longitudinally moving lifter rod (plunger, 40), which supports a saw blade (saw blade, 26), and an oscillation mechanism (i.e. motor, 32, gear 34, gear ring, 46, counterweight 56, and pusher 58; see Figure 1) that is able to impart a variable oscillation stroke (a.k.a. orbital movement) (by the adjustable means of selector knob 168) to the saw blade (26).

However, Tam does not disclose that the oscillation mechanism includes automatic means for adjusting the oscillation stroke (orbital movement) smoothly between the maximum and minimum stroke during the sawing process, as an automatic response to a function of the pressure of the saw blade against a workpiece to be sawn. Instead, Tam discloses that the adjusting means are manually actuated. Tam discloses that by the means of the selector knob, 168, that oscillation stroke (orbital movement) is smoothly controlled between the maximum and minimum stroke during the sawing process (see col. 6, lines 24-64). However, as the difference between Tam and the limitations of claim 1, is the broad recitation of replacing a manually actuated adjustment means with an automatically actuated adjustment means, it is noted that it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art and would be an obvious modification. *In re Venner*, 120 USPQ 192.

Orbital movement is well known in the art as it applies to jigsaws to impart a more effective cutting action by exerting a forward or lateral component to the cutting stroke (Tam col. 1, lines 10-14), and has been found to achieve greater cutting efficiency from power tools in that it resembles the motion of an individual putting relatively greater force or weight against a saw during a cutting stroke than a return stroke (Tam col. 2, lines 37-50). Moreover, depending on the work piece being addressed, more or less cutting action may be desired, and the force of the orbital cutting action may be adjusted by changing the orbital stroke (Tam col. 6, lines 24-27). Although it is well known in the art to manually adjusting the orbital or oscillation stroke,

to change the cutting action, a means of automatically adjusting the stroke is not known per se. However, attention is also directed to the Smith reference that discloses a means for sensing and evaluating blade speed and work feed rate for a bandsaw, a close relative of the jigsaw cutting tool.

Smith discloses that in bandsaws, both manually fed and automated systems are known in the art. However, the manually feed systems have a disadvantage in that adjustments to the feed rate are determined by the judgment of an operator who listens for changes in sound of the saw blade. This is similar to the manual adjustment of the orbital blade movement of the jigsaw, wherein the operator controls the adjustment based upon the perceived exertion of the cutting blade through the workpiece in order to maximize the cutting speed and performance. Smith continues that by providing a sensing device to measure and calculate the movement and lateral displacement of the saw blade, those measurements can be used to automatically alter the work-feed rate and/or saw blade rim speed as sawing conditions change within the workpiece. The work feed rate is therefore automatically infinitely variable over a preselected range based on the detected lateral displacement of the saw blade. Thus, the operator's experience and skill is no longer a factor in determining the feed rate, resulting in better cutting performance and consistency. Although automating altering the work-feed rate of a bandsaw is not the same as automating the adjusting of orbital cutting motion of a jigsaw, one having ordinary skill in the art would recognize that it would be obvious to apply the known technique of automating a manual operation, such as the Tam adjusting means, to improve the cutting performance of a cutting tool, such as taught by

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Smith, especially as it has also been held that providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art and would be an obvious modification. *In re Venner*, 120 USPQ 192.

In regards to claim 2, the modified device of Tam discloses wherein the oscillation mechanism has a roller lever (82) that is disposed in the housing (12) can rotate around a horizontal first axis (pivot pin, 100), and supports a roller (114) that remains in contact with the saw blade (26) and can rotate around a second horizontal axis (the rotational axis of the roller), and whose oscillation mechanism has a fork lever (60) that periodically deflects the roller lever (82).

In regards to claim 3, the modified device of Tam discloses wherein the oscillation mechanism includes a spring element (110) that is disposed between the housing (12) and the end of the roller lever (82), orientated away from the roller (114) and cooperates with a component (106) parallel to the deflection direction of the fork lever (60) .

In regards to claim 4, the modified device of Tam discloses wherein parallel to the spring element (110), a dampening device (90) is disposed between the housing (12) and the end of the roller lever (82) orientated away from the roller (114).

In regards to claim 5, the modified device of Tam discloses wherein underneath the roller lever (82), in the region of its end oriented away from the roller (114), a first stop (orbital pin, 164) is provided on the housing (12).

In regards to claim 6, the modified device of Tam discloses wherein underneath the roller lever (82), in the region of its end oriented away from the roller (114), a first stop (orbital pin, 164) is provided on the housing (12).

In regards to claim 7, the modified device of Tam discloses wherein the second stop (orbital pin, 164) can be set to various distances from the roller lever (82) (col. 6, lines 24-44).

In regards to claim 8, the modified device of Tam discloses wherein the second stop (orbital pin, 164) can be manually set to various distances from the roller lever (82) (col. 6, lines 24-44).

In regards to claim 9, the modified device of Tam discloses wherein the saw blade (26) is pressed against the roller (114) by a compression spring (spring clip, 162; Figure 2A) whose compression spring force is weaker than a spring force of the spring element (110), especially when spring element 110 is in the compressed position.

In regards to claim 10, the modified device of Tam discloses wherein a deflection of the roller lever (114) only occurs if an advancing force of the compass saw is greater than the difference between the spring force (110) and the compression spring force (162).

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA M. LEE whose telephone number is (571)272-



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8339. The examiner can normally be reached on Monday through Friday, 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura M Lee/

Examiner, Art Unit 3724

3/14/2008

/Boyer D. Ashley/

Supervisory Patent Examiner, Art Unit 3724